

Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

#### *Paperwork Reduction Act*

This final rule does not contain information collection requirements covered by 5 CFR part 1320 requiring OMB approval.

#### *Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

#### **List of Subjects in CFR Part 207**

Administrative practice and procedure, Economic statistics, Grant programs-transportation.

Accordingly, under the authority of 46 App. U.S.C. 1114, 46 App. U.S.C. 1171 *et seq.*, and as discussed in the preamble, MARAD amends 46 CFR Chapter II by removing part 207.

Dated: December 6, 2000.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00-31528 Filed 12-11-00; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 635**

[Docket No. 000511133-0330-03; I.D. 120999B]

**RIN 0648-AN52**

#### **Atlantic Highly Migratory Species Fisheries; Implementation of ICCAT Recommendations**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to amend the regulations governing the

Atlantic swordfish fishery to reduce the annual landings quota for the north Atlantic swordfish stock to 2,219 metric tons (mt) dressed weight (dw) for each of the next 3 fishing years (2000, 2001, 2002), with 300 mt dw allocated for incidental catch and the remainder allocated equally to each of the two semi-annual seasons for the directed fishery (June 1 through November 30 and December 1 through May 31). This final rule also establishes an allowance for dead discards of 320 mt whole weight (ww) in 2000, 240 mt ww in 2001, and 160 mt ww in 2002. Dead discards in excess of the allowance will be deducted from the subsequent year's landings quota. Additionally, NMFS is taking several actions regarding import restrictions: Removing a prohibition on the importation of Atlantic bluefin tuna from Panama; prohibiting the importation of BFT and its products from Equatorial Guinea; and prohibiting the importation of Atlantic swordfish and its products from Belize and Honduras.

The intent of these actions is to improve conservation and management of the Atlantic swordfish and BFT, while allowing harvests consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

**DATES:** All provisions of this final rule are effective January 11, 2001.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (EA/RIR/FRFA) supporting this action may be obtained from Rachel Husted, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Rachel Husted, 301-713-2347; fax: 301-713-1917 or by email at [rachel.husted@noaa.gov](mailto:rachel.husted@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Atlantic swordfish fishery and the BFT fishery are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT. This final rule is based on two proposed rules, both published on May 24, 2000. One of the proposed rules described the proposed changes in trade restrictions (65 FR 33517) while the other described

the proposed quotas associated with the rebuilding program for north Atlantic swordfish (65 FR 33519). The contents of the two proposed rules were combined in the development of this final rule.

#### **Swordfish Rebuilding Program**

According to the 1999 ICCAT stock assessment, the biomass of the north Atlantic swordfish stock at the beginning of 1999 was estimated to be at 65 percent of that needed to produce maximum sustainable yield (MSY). The biomass associated with MSY is the target stock size of the rebuilding program for north Atlantic swordfish. The 1998 fishing mortality rate was estimated to be 1.34 times the rate needed to produce MSY. Because NMFS is committed to rebuilding north Atlantic swordfish, consistent with the recent ICCAT 10-year rebuilding program and the requirements of the Magnuson-Stevens Act, immediate reductions in landings are necessary to rebuild the stock to levels that would support MSY.

North Atlantic swordfish landings for all nations combined for 1998 were estimated to be 12,175 mt ww. At the November 1999 ICCAT meeting, a recommendation was adopted to establish a 10-year rebuilding program for north Atlantic swordfish and to reduce the total allowable catch for all countries fishing on that stock to 10,600 mt ww (7,970 mt dw) for 2000; 10,500 mt ww (7,895 mt dw) for 2001; and 10,400 mt ww (7,820 mt dw) for 2002. Although the ICCAT recommendation specifies the quota in whole weight, this document refers to the landings quotas in dressed weight (dw = 0.7519 ww) for the purposes of monitoring U.S. harvests, as swordfish are processed at sea and landed in dressed form (head, fins, viscera and tails removed). This final rule implements the ICCAT recommendations for rebuilding north Atlantic swordfish.

Under the ICCAT recommendation, the United States is allocated 29 percent of the North Atlantic swordfish landings quota (total allowable catch minus the total dead discard allowance) for major harvesting nations in 2000, 2001, and 2002. This amounts to 2,951 mt ww for each year and represents a 5 percent decrease from the U.S. landings quota recommended by ICCAT for 1998. Consistent with the HMS FMP, the annual quota is divided between a directed fishery quota and an incidental quota (1,919 mt dw directed, 300 mt dw incidental). The directed fishery quota of 1,919 mt dw is divided equally into two semi-annual quotas: June 1 - November 30 and December 1 - May 31

(959.5 mt dw for each semi-annual season). The incidental quota allows for landings of swordfish taken incidental to other fisheries such as the highly migratory species (HMS) recreational fishery or the pelagic longline fishery for tunas.

In addition to the landings quota, ICCAT allocated to the United States 80 percent of the dead discard allowance (i.e., the U.S. share is 320 mt ww in 2000, 240 mt ww in 2001, and 160 mt ww in 2002). The dead discard allowance is to be phased out by 2004. The United States will deduct any amount over its dead discard allowance from the U.S. landings quota in the following year. If the United States discards less than its share of the dead discard allowance, the remainder will be added to the total quota available for all fishing nations in subsequent years, and will be reallocated by ICCAT.

In 1998, the United States reported discarding 433 mt ww of dead swordfish in the North Atlantic Ocean. Assuming dead discards occur in proportion to landings, dead discards in 2000 might decrease to 411 mt ww commensurate with the 5 percent decrease in landings quota (i.e., 5 percent less than 433 mt reported for 1998). This would result in an expected overharvest of the 2000 dead discard allowance by 91 mt ww. If discard rates remain proportional to the adjusted quota in 2001 and 2002, the dead discard allowance would be exceeded by 158 and 230 mt ww, respectively. These overages would require further reductions in the landings quotas and, combined with the initial landings quota reduction recommended by ICCAT (5 percent), might result in an actual decrease in landings of up to 10 percent by 2002 if the rate of discarding is not reduced (refer to the EA/RIR/FRFA for more details). However, on August 1, 2000, NMFS published a final rule intended to reduce dead discards of swordfish through time/area closures (65 FR 47214). If the time/area closures are effective, they will mitigate to some extent the effects of phasing out the dead discard allowance.

These regulatory changes will further ICCAT's international management objectives for the Atlantic swordfish fishery. NMFS has evaluated the annual quota and the dead discard allowance in accordance with the procedures and factors specified in 50 CFR 635.27(c)(3), and has determined that these measures are consistent with the latest stock assessment and recommendations of ICCAT.

### **Import Restrictions**

On August 21, 1997 (62 FR 44422), NMFS implemented a 1996 ICCAT recommendation to prohibit the importation of BFT and its products from Panama, Honduras, and Belize. At that time, vessels of those countries had been determined by ICCAT to be fishing in a manner inconsistent with ICCAT conservation and management measures for BFT. In recognition of Panama's new status as a Contracting Party to ICCAT and the steps that country has taken and is taking to control its fleet and address ICCAT's concerns, ICCAT recommended in 1999 that its members lift the trade ban on BFT products from Panama. Therefore, consistent with the 1999 ICCAT recommendation, this final rule lifts the BFT import restriction with respect to Panama.

In contrast to the efforts of the Government of Panama, information available to ICCAT indicates that Honduras and Belize continue to have vessels fishing in a manner that diminishes the effectiveness of ICCAT's conservation and management measures for both BFT and Atlantic swordfish. (Background on the original determination can be found at 62 FR 44422, August 21, 1997.) In recent years, significant increases in exports of swordfish by Belize and Honduras have been recorded, although no swordfish catch data have been reported to ICCAT. This increased activity is occurring while other countries have reduced their catches of swordfish to comply with ICCAT conservation measures for the overfished North Atlantic swordfish population. ICCAT has repeatedly contacted the governments of Belize and Honduras but has not received a satisfactory response from either government regarding actions to rectify the situation. Therefore, consistent with the 1999 ICCAT recommendation, NMFS prohibits the importation of Atlantic swordfish and its products from Honduras and Belize. The prohibition on imports of BFT and its products from these countries also remains in effect.

In 1999, ICCAT also recommended that its members prohibit imports of BFT from Equatorial Guinea (a Contracting Party to ICCAT). ICCAT took this step as a last resort to address non-compliance with BFT catch quota limits. Import data from Japan for the years 1997-1999 reveal significant exports of BFT by Equatorial Guinea despite the fact that, for those years, this country received no BFT catch allocation from ICCAT. The Government of Equatorial Guinea has not responded to repeated correspondence from ICCAT

regarding the BFT fishing activities of its vessels and Equatorial Guinea has reported no BFT catch data. Therefore, consistent with the 1999 ICCAT recommendation, NMFS prohibits the importation of BFT and its products from Equatorial Guinea.

### **Other ICCAT Issues**

ICCAT adopted a number of other recommendations and resolutions at the 1999 meeting that will not require rulemaking, but will require management action on the part of NMFS. These include a recommendation reiterating the limitation on fishing capacity of commercial vessels fishing for Northern albacore, and a recommendation calling for the United States to endeavor to limit its total catch of southern albacore to no more than 4 percent by weight of its total catch of south Atlantic swordfish. Several other recommendations include provisions that request Contracting Parties to provide catch data or information related to fishing vessel registration. ICCAT also adopted a non-binding resolution encouraging all parties to participate actively in efforts to combat illegal, unregulated and unreported fishing. NMFS intends to implement these measures through non-regulatory actions and will provide ICCAT with all available information that has been requested by ICCAT.

### **Summary**

NMFS will implement ICCAT's 1999 recommendation of a North Atlantic swordfish U.S. quota of 2,219 mt dw for each year 2000, 2001, and 2002. The U.S. landings quota will remain constant for 2000, 2001, and 2002, but it is subject to adjustment between years (consistent with ICCAT recommendations) if the directed or incidental quotas are exceeded or underharvested, or if the dead discard allowance is exceeded.

Consistent with the HMS FMP, the directed fishery quota of 1,919 mt dw is divided equally into two semi-annual quotas: June 1 - November 30 and December 1 - May 31 (959.5 mt dw for each season). Any cumulative overharvest/underharvest that occurs during any year would then be subtracted from/added to the following year's quota, consistent with the ICCAT recommendations.

In addition, this final rule establishes a dead discard allowance. Any discards in excess of the dead discard allowance will be subtracted from the directed quota for the following year.

NMFS prohibits the importation of BFT from Equatorial Guinea, extends

the import prohibition on BFT from Honduras and Belize to include an import prohibition on Atlantic swordfish, and lifts the prohibition on BFT imports from Panama.

#### Comments and Responses

NMFS held public hearings in June-July 2000 to receive comments from fishery participants and other members of the public regarding the proposed regulations. One written comment was submitted to NMFS during the 60-day comment period. Responses to specific comments are provided according to subject.

#### North Atlantic Swordfish Rebuilding Program

*Comment 1:* U.S. pelagic longline fishermen support the recommended quota reduction to achieve rebuilding for North Atlantic swordfish. However, this support is based on the presumption that all other countries harvesting in the Atlantic will comply with the rebuilding program. The conservation contributions of U.S. fishermen must not be undermined by the non-compliance of other parties fishing in the Atlantic.

*Response:* The United States has taken a leading role in ensuring compliance by ICCAT members and cooperation by non-members with the conservation and management measures of ICCAT. NMFS will continue to advocate for the full implementation of these measures by all parties. According to the compliance recommendations that have been adopted by ICCAT, continued violation of quotas can result in deductions from a party's quota and/or trade measures.

*Comment 2:* The dead discard allowance penalizes U.S. and Canadian fishermen for their honest reporting of dead discards that result from a zero tolerance for undersized fish. Other nations continue to land undersized swordfish in excess of their 15 percent tolerance level. If other countries continue to violate the minimum-size restrictions, ICCAT should eliminate the minimum size and instead recommend hot-spot closures in all appropriate Atlantic areas to accomplish the goal of protecting juvenile swordfish.

*Response:* NMFS is aware that some other nations harvest small swordfish in excess of the allowed tolerance level. To discourage this practice, the United States has taken steps to eliminate the sale of undersized swordfish in the U.S. market. In addition, the United States supported an ICCAT resolution adopted in 1999 that requests the Standing Committee on Research and Statistics (SCRS) to analyze possible times and

areas for international closures to protect small swordfish. The SCRS will also conduct the necessary studies to determine whether modifications in longline gear configurations can reduce catches of undersized swordfish. A report on these findings will be presented in November 2002. At that time, alternatives to the minimum size may be considered.

*Comment 3:* Handgear permits issued under the limited access program have created a new directed fishery on the east coast of Florida and the Gulf of Mexico, areas that have been identified as juvenile swordfish hot-spots. This additional source of mortality in areas that are closed to pelagic longline vessels could threaten the effectiveness of the swordfish rebuilding program.

*Response:* It is likely that small swordfish taken by handgear can be released alive. NMFS intends to monitor catches and dead discards in this sector of the fishery, and will take additional steps to reduce mortality on juvenile swordfish as necessary.

*Comment 4:* There is no need for 300 mt dw to be set aside for the incidental quota. This allocation could result in unnecessary closures toward the end of the first semi-annual season, which is a critical time for fishermen on the Grand Banks.

*Response:* Recent action to establish limited access permits for the directed and incidental swordfish fisheries together with the implementation of time/area closures may affect the distribution of catch and effort in the directed and incidental categories. Depending on the accumulated catch in each category, NMFS may reconsider the distribution of quota. In the interim, NMFS will attempt to avoid directed fishery closures whenever possible through in-season transfers as allowed under the regulations.

#### Import Restrictions

*Comment 6:* The proposed import restrictions are not an effective means of enforcing compliance with ICCAT's conservation and management program. In some cases, we do not import swordfish or BFT from identified countries.

*Response:* NMFS recognizes that the United States does not currently have significant imports from the identified countries. However, NMFS believes that it is important to adopt these measures in order to provide multilateral support for countries like Japan that do import fish from these countries. Such multilateral action helps to ensure that trade restrictions prevent these countries from exporting their fish to new markets or from transshipping

through intermediary nations in order to evade trade restrictions.

*Comment 7:* Due to the lag time associated with data collection and implementation of the regulations, the United States has difficulty considering new catch and trade information that comes to light between ICCAT meetings.

*Response:* NMFS recognizes these difficulties but is committed to using the best available data to evaluate member and non-member fishing activities in an effort to identify possible trade-related problem vessels and countries for consideration and possible action at ICCAT. NMFS believes that, although time consuming, a multilateral approach is an appropriate and effective way to address fishing activities that diminish the effectiveness of ICCAT.

#### Northern Albacore Rebuilding

*Comment 8:* A rebuilding program for northern albacore must take into consideration the U.S. recreational fishery. Establishing an incidental catch quota and applying recreational landings against that quota, as was done in the swordfish rebuilding program, will not reflect the magnitude of the current recreational fishery for albacore.

*Response:* In establishing the foundation for an international rebuilding program, NMFS would work through ICCAT to adopt a target stock size and time frame for rebuilding. Should ICCAT adopt a country specific quota system as an element of the rebuilding program, the United States would seek to obtain an equitable allocation based on its historic share, including both the recreational and commercial components of the fishery. Domestic implementation of the country quota would again reflect patterns of historical use.

#### Changes From the Proposed Rule

No changes, other than minor editorial changes, were made from the proposed rule.

#### Classification

This final rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries. The objective of this final rule is to improve conservation and management of the Atlantic swordfish and BFT. No new reporting, record-keeping, or other compliance requirements are required by this final rule.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA). A Final Regulatory Flexibility Analysis (FRFA) has been prepared and a summary is provided here. In preparing the FRFA, it was assumed that the population of small entities affected consists of fishermen issued limited access permits for swordfish. As of December 31, 1999, there were 450 directed and incidental swordfish permit holders and 118 swordfish handgear permit holders. The quota reductions and implementation of the dead discard allowance will, in the short term, reduce ex-vessel swordfish revenues for a substantial portion of the swordfish fleet.

Assuming that the lower quotas will result in equal reductions in swordfish catch for all vessels, the majority of the fleet may experience declines in revenue of between 1 and 4 percent by 2001. By 2002, about 42 percent of active permit holders will experience declines in gross revenues of between 1 and 5 percent, although none of the active permit holders will experience revenue decreases of 5 percent or more. Estimated impacts are lower than those provided in the draft EA, due to a final rule to reduce bycatch and incidental catch in the pelagic longline fishery that was published on August 1, 2000. Additional vessels may be affected if there are more dead discards than expected, thereby making further reductions to the landings quota necessary. However, even without compensatory actions by vessel operators (e.g., increased yellowfin or bigeye tuna fishing) or marketing efforts to enhance prices in the domestic fresh swordfish market, no vessels are expected to experience revenue declines of 5 percent or more. Additionally, lower quotas expected to contribute to stock rebuilding within a 10-year time frame. Thus, negative short-term impacts are expected to yield revenue gains in the long run as the stock is rebuilt and landings quotas increase.

The other alternative considered by NMFS was the status quo. No other alternatives were considered, because NMFS is required under ATCA to implement ICCAT recommendations upon acceptance by the United States and because multilateral action through ICCAT is the only way swordfish can be rebuilt. Although the status quo for the swordfish quotas might have lesser short-term economic impacts on participants in the pelagic longline fishery, that alternative is not consistent with the rebuilding plan established by the HMS FMP. Not implementing the

quota reductions and the dead discard allowance at this time would maintain current catch levels only in the short term. Eventually, further decline in swordfish abundance would increase fishing costs (lower catch per unit effort/increased discards of small fish) and decrease revenues (lower total swordfish catch); thus, greater economic impacts would likely result from maintaining the status quo. The FRFA provides further discussion of the economic effects of the alternatives considered. The factual, policy and legal reasons for selecting the alternatives adopted in the final rule are outlined in the EA.

Implementing the trade restrictions for Belize, Honduras and Equatorial Guinea will not have a significant economic impact on a substantial number of small entities, because these countries currently do not export to the United States and there are already alternative sources of supply for U.S. importers and processors.

This final rule has been determined to be not significant for purposes of Executive Order 12866. The final action does not impose any additional reporting or recordkeeping requirements subject to OMB approval under the Paperwork Reduction Act.

On November 19, 1999, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A new Biological Opinion (BO) was issued on June 30, 2000. However, NMFS has reinitiated consultation on the pelagic fisheries for swordfish, sharks, tunas and billfish because the agency determined further analysis of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on turtles. In the meantime, NMFS has issued an emergency rule that is effective for 180 days from October 10, 2000 through April 9, 2001. The emergency regulations establish a time and area closure and gear requirements to reduce bycatch and bycatch mortality of threatened loggerhead and endangered leatherback sea turtles pending completion of the new BO.

#### **List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: December 6, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

#### **PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.27, paragraphs (c)(1)(i)(A) and (c)(3)(i) are revised, and paragraphs (c)(1)(i)(C) and (c)(3)(iii) are added to read as follows:

#### **§ 635.27 Quotas.**

(c) Swordfish. (1) \* \* \*

(i) *North Atlantic swordfish stock.* (A) The directed fishery quota for the North Atlantic swordfish stock is 1,919 mt dw for each fishing year beginning June 1, 2000. The annual directed fishery quota is subdivided into two equal semiannual quotas of 959.5 mt dw, one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

(C) The dead discard allowance for the North Atlantic swordfish stock is: 320 mt ww for the fishing year beginning June 1, 2000; 240 mt ww for the fishing year beginning June 1, 2001; and 160 mt ww for the fishing year beginning May 1, 2001. All swordfish discarded dead from U.S. fishing vessels, regardless of whether discarded from vessels permitted under this part, shall be counted against the allowance.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section shall be subtracted from the landings quota in the following fishing year. NMFS will file with the Office of the Federal Register for publication notification of any adjustment made under this paragraph (c)(3)(iii).

3. Section 635.45 is revised to read as follows:

**§ 635.45 Products denied entry.**

(a) All shipments of BFT or BFT products, or swordfish or swordfish products, in any form, harvested by a vessel under the jurisdiction of Belize or

Honduras will be denied entry into the United States.

(b) All shipments of BFT or BFT products, in any form, harvested by a vessel under the jurisdiction of Equatorial Guinea will be denied entry into the United States.

4. The heading of § 635.46 is revised to read as follows:

**§ 635.46 Import requirements for swordfish.**

[FR Doc. 00-31651 Filed 12-11-00; 8:45 am]

**BILLING CODE 3510-22-S**